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09400SB0280sam001

LRB094 09387 WGH 41235 a

1 AMENDMENT TO SENATE BILL 280

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 280 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Code of Civil Procedure is amended by  
5 adding Section 2-1105.01 as follows:

6 (735 ILCS 5/2-1105.01 new)

7 Sec. 2-1105.01. Physician Personal Assets Protected.

8 (a) In a medical malpractice action as defined in Section  
9 2-1704, a physician's personal assets may not be used to  
10 satisfy a judgment against the physician if:

11 (1) the physician has a policy of liability insurance  
12 of at least \$1,000,000 of coverage available to satisfy the  
13 judgment against him or her in the case;

14 (2) before trial, the physician signs and provides a  
15 sworn affidavit to the plaintiff and the physician's  
16 insurer stating the following:

17 (A) the plaintiff has made a demand to settle the  
18 case against the physician within the physician's  
19 insurance policy limits (and the written demand is  
20 attached to the affidavit);

21 (B) the physician has made a written demand to the  
22 physician's insurer that the insurer settle the case  
23 within the physician's insurance policy limits (and  
24 the written demand is attached to the affidavit);

1           (C) the insurer for the physician has not settled  
2           the case within the physician's insurance policy  
3           limits pursuant to the written demand of the physician;  
4           and

5           (D) the physician agrees to assign to the  
6           plaintiff, after verdict, any and all causes of action  
7           the physician may have against the physician's insurer  
8           to prosecute a cause of action against that insurer for  
9           acting in bad faith or vexatiously and without  
10          reasonable cause by failing to settle the case within  
11          the physician's insurance policy limits; and

12          (3) after a verdict in excess of the physician's  
13          insurance policy limits, the physician has not withdrawn  
14          the demand to settle in subdivision (2)(B) and assigns to  
15          the plaintiff, pursuant to subdivision (2)(D), any and all  
16          causes of action the physician has against the physician's  
17          insurer for acting in bad faith or vexatiously and without  
18          reasonable cause by failing to settle the case within the  
19          physician's insurance policy limits.

20          (b) In a medical malpractice action as defined in Section  
21          2-1704, if a physician does not make a written demand to settle  
22          in accordance with subdivision (2)(B) of subsection (a), the  
23          physician's personal assets may not be used to satisfy a  
24          judgment against the physician if:

25                (1) the physician meets the insurance requirements of  
26                paragraph (1) of subsection (a); and

27                (2) after the verdict, the court determines that the  
28                physician's decision not to make the written demand was  
29                reasonable. Such a determination may be made only in  
30                accordance with the following procedure:

31                    (A) The physician must file a motion, within 10  
32                    days after the verdict, for the exemption of the  
33                    physician's assets.

34                    (B) The parties shall have 60 days after the motion

1           is filed to conduct discovery as to whether the  
2           physician's decision not to make the written demand was  
3           reasonable.

4           (C) Upon completion of the discovery period and any  
5           additional time granted to the parties by the court for  
6           submissions in support of or opposition to the the  
7           motion, the court shall hold an evidentiary hearing, if  
8           necessary, and determine whether the physician's  
9           decision not to make the written demand was reasonable.

10          During the pendency of a motion filed by a physician under  
11          this subsection (b) for the exemption of the physician's  
12          assets, the enforcement of the judgment against the physician  
13          shall be stayed, but the physician shall be prohibited from  
14          transferring, concealing, or dissipating his or her assets. The  
15          physician shall not be required to post a bond or other form of  
16          security during the pendency of the motion.

17          The granting of a motion under this subsection (b) shall be  
18          conditioned upon the physician's assignment to the plaintiff,  
19          pursuant to subdivision (2)(D) of subsection (a), of any and  
20          all causes of action the physician has against the physician's  
21          insurer for acting in bad faith or vexatiously and without  
22          reasonable cause by failing to settle the case within the  
23          physician's insurance policy limits.

24          If the court denies a motion filed by a physician under  
25          this subsection (b) and determines that the physician's  
26          decision not to make a written demand was not reasonable, the  
27          physician may appeal the denial of the motion after a final  
28          judgment is entered in the case. Any appeal shall be the rules  
29          that apply to civil appeals, including Supreme Court Rule 305  
30          regarding stays of enforcement of money judgments.

31          (c) This Section applies only to an individual physician  
32          who satisfies the requirements of subsection (a) or (b) and  
33          does not apply to any actual or alleged principal, apparent  
34          principal, employer, master, or partner of the physician, or

1 any other party in the case.

2 (d) This Section does not restrict, impair, or otherwise  
3 affect the amount of damages which may be awarded to the  
4 plaintiff or the amount of any judgment in favor of the  
5 plaintiff.

6 (e) This Section does not restrict, impair, or otherwise  
7 affect the statutory and common law causes of action a  
8 physician or his or her assignee has against the physician's  
9 insurer for the insurer's acting in bad faith or vexatiously  
10 and without reasonable cause by failing to settle a case  
11 against the physician within the physician's insurance policy  
12 limits.

13 Section 99. Effective date. This Act takes effect upon  
14 becoming law.".